

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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ALEXANDER FINANCE C.D. INC.

v.

ARKADY SIROTOVSKY, NATALIA SIROTOVSKY,  
MYKHAILO FITYAK, LARISSA FITYAK, ADOLF  
GAVRILOV, and LYUDMILA ANDRIANOVA

v.

ALEXANDER FINANCE, ANDREW CHAROFF,  
EUGENE URITSKY, GENE BURD, ALEXANDER  
HOLDINGS, LL, COMMERCE WAY, INC.,  
MICHAEL KOGAN, KOGAN & COMPANY, INC.,  
PENN FINANCIAL GROUP, INC.

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NO. 02-CV-4977

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of the Motion of Arkadi Nisenzon, Lilia Shukhatian, Georgiy Shukhatian, and International Alternative Service Group to Intervene, and Supplemental Motion to Intervene, and upon consideration of any opposition thereto,

It is hereby **ORDERED** that the Motion to Intervene is hereby **GRANTED** and interveners shall forthwith file and serve their Complaint upon all parties in accordance with the Rules.

BY THE COURT:

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J.

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**SUPPLEMENTAL MOTION TO INTERVENE**

Arkadi Nisenzon and Lilia Shukhatian and Georgiy Shukhatian, by and through their undersigned attorney, Harvey A. Sernovitz, Esquire, hereby file this Supplemental Motion to Intervene in the instant action and represent as follows:

1. On October 15, 2003, the proposed Interveners filed a Motion to Intervene in this action and averred that Counterclaim Defendant Michael Kogan fraudulently converted funds belonging to the proposed Interveners and then transferred part of the fraudulently converted funds, in the amount of approximately \$400,000.00, to an escrow fund established in this action for the benefit of certain of the Defendants herein. See Motion to Intervene, ¶¶13-14.

2. Proposed Interveners further alleged that none of the parties to this action have any possessory rights to the aforesaid escrow funds and that, unless permitted to enter this matter for the limited purpose of asserting their own property rights in the escrow funds, the proposed Interveners' rights to said funds would be irretrievably lost. Motion to Intervene, ¶¶16-18.

3. Since filing the Motion to Intervene, Proposed Interveners have pursued certain limited discovery from Fiserv Securities, Inc., the clearing house for Penn Financial Group, Inc., and for Defendant Michael Kogan.

4. Attached hereto as Exhibit A and incorporated herein by reference are documents secured by proposed Interveners, by means of subpoena, from Fiserv Securities, Inc.

5. Attached hereto as Exhibit B and incorporated herein by reference is the instruction of Lilia Shukhatian dated February 24, 2003 to initiate a wire transfer in the amount of \$1 million dollars from her account to what she believed was the account of LA Commodities LLC, No. 517-52073, via the Bank of New York.

6. The attached Fiserv documents, Exhibit A, demonstrate that on February 25, 2003, a wire transfer in the amount of \$1 million dollars was credited to an account in the name of Equity Allocation Partners, Account No. 517-52073 at Fiserv Securities, Inc. On the Equity Allocation Partners account statement included in Exhibit A, the \$1 million dollar wire is identified as coming from "BONY," the abbreviation for Bank of New York.

7. This wire transfer represented funds forwarded by Proposed Interveners Arkadi Nisenzon and Lilia Shukhatian upon the instructions of Michael Kogan and in reliance upon Kogan's representations that Account No. 517-52073 was their account in the name of LA Commodities.

8. In truth and in fact, Equity Allocation Partners, Account No. 517-52073, was an account owned and controlled by Kogan and used as a depository for obtaining, holding, and disbursing funds fraudulently obtained from Kogan clients such as Proposed Interveners. For further detail, see Complaint, attached as Exhibit A to Motion to Intervene, ¶¶25-26 and 36-39.

9. Two days later, on February 27, 2003, Kogan caused funds to be wired from the Equity Allocation Partners' account to the accounts of the following Defendants herein and in the following amounts:

L. Andrianova	\$ 98,304.00
M. Fityak	\$111,142.00
L. Fityak	\$ 45,232.00
A. Gavrilov	\$ 42,812.00
N. Sirotsky	\$ 40,010.00

See Exhibit A.

10. Each of the aforesaid transfers was to an account, identified on Exhibit A, at PNC Bank.

11. Counsel for Defendants has confirmed that the escrow funds established in this case are indeed held in the accounts at PNC Bank which are identified in Exhibit A.

12. The attached documents demonstrate that the funds placed in escrow in this matter, in the total amount of \$337,500.00, are identifiable as funds received two days earlier from the proposed Interveners and that proposed Interveners can demonstrate title and right of possession to the escrow funds which is superior to that of all other parties in this litigation and therefore entitles them to immediate possession of the funds.

WHEREFORE, proposed Interveners request this Honorable Court to grant their Motion to Intervene.

Respectfully submitted,

Date: 5/25/2004

BY: \_\_\_\_\_  
HARVEY A. SERNOVITZ, ESQUIRE  
Attorney for Arkadi Nisenzon, Lilia  
Shukhatian, Georgiy Shukhatian, and IASG

I.D. No. 10313  
Two Penn Center Plaza, Suite 910  
1500 John F. Kennedy Boulevard  
Philadelphia, PA 19102  
(215) 735-8100

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**CERTIFICATE OF SERVICE**

Harvey A. Sernovitz, Esquire, counsel for proposed interveners Arkadi Nisenzon, Lilia Shukhatian, Georgiy Shukhatian, and International Alternative Service Group, Ltd., hereby certifies that on the 25<sup>th</sup> day of May, 2004, he served a true and correct copy of the attached Supplemental Motion to Intervene by U.S. First Class mail, postage prepaid, to the following counsel as follows:

A. Charles Peruto, Esquire  
Washington West Building  
235 South 8<sup>th</sup> Street  
Philadelphia, PA 19106  
Attorney for Alexander Finance C.D., Inc.,  
Kogan & Company, Inc., Michael Kogan,  
Commerce Way, Inc., Alexander Holdings, LLC,  
Eugene Uritsky, Andrew Charoff

Richard L. Scheff, Esquire  
Montgomery, McCracken, Walker & Rhoads  
123 South Broad Street  
Philadelphia, PA 19109  
Attorney for Penn Financial Group, Inc.

Dante Mattioni, Esquire  
Mattioni, Ltd.  
399 Market Street, Second Floor  
Philadelphia, PA 19106  
Attorney for Arkady Sirotovsky, Natalia  
Sirotovsky, Mykhailo Fityak, Larissa  
Fityak, Adolf Gavrilov, Lyudmila  
Andrianova

Gene M. Burd, Esquire  
Marks & Sokolov, LLC  
1835 Market Street  
Philadelphia, PA 19103  
Attorney for Gene Burd

Date: 5/25/2004

BY: HARVEY A. SERNOVITZ, ESQUIRE